83-417

CASE NUMBER

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

HUNG T. VU & ANTHIA VU,

Petitioners,

vs.

THE SINGER COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Did the statute creating the Job Corp impose a duty upon Job Corps contractors to exercise due care to prevent assaultive behavior oy Job Corps enrollees upon neighbors of Job Corp centers?

PARTIES

The parties are Anthia Vu and Hung T. Vu, Petitioners and The Singer Company, Respondent.

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JURISDICTION OF THIS COURT

Certiorari is sought to review the decision of the United States Court of Appeal for the Ninth Circuit dated May 26, 1983, a copy of which is included in the Appendix. No rehearing was sought and no extension of time has been sought within which to petition for certiorari.

/ / /

This court has jurisdiction to review the judgment of the court of appeals under 28 U.S.C. §1254(1).

STATUTES INVOLVED IN THE CASE

The principal statute at issue in this Petition is 29 U.S.C. §932:

> "Standards of Conduct
>
> (a) Within Job Corps centers, standards of conduct and deportment shall be provided and stringently enforced. In the case of violations committed by enrollees, dismissals from the Corps, or transfers to other locations, shall be made in every instance where it is determined that retention in the Corps, or in a particular Job Corps center,

will jeopardize the enforcement of such standards of conduct and deportment or diminish the opportunity of other enrollees.

(b) In order to promote the proper moral and disciplinarv conditions in the Job Corps, the individual directors of Job Corps centers shall be given full authority to take appropriate disciplinary measures against enrollees including, but not limited to, dismissal from the Job Corps, subject to expeditious appeal procedures to higher

authority as provided under regulations established by the Secretary."

(29 U.S.C. §932).

STATEMENT OF THE CASE

This action was originally filed in State Court. It was removed to the United States District Court for the Northern District of California under 28 U.S.C. §1441(a).

Petitioners are Dr. Hung T. Vu and his wife Anthia Vu. On December 17, 1978, Dr. and Mrs. Vu lived in downtown San Jose, a few block away from the San Jose Job Corp Center. The San Jose Job Corp Center was operated by The Singer Company (hereafter "Singer") under a contract with the Department of Labor.

On the evening of December 17, 1978, while Dr. Vu was at the hospital, a group of Job Corp enrollees broke into the Vus' home. They beat and raped Mrs. Vu, then

made off with silverware and other valuables.

Dr. and Mrs. Vu filed a lawsuit for personal injuries and property damage, claiming that Singer was negligent in its supervision of the Job Corp enrollees. The District Court granted Summary Judgment in favor of Singer, holding that Singer owed no duty to the Vus as a matter of law. Vu v. Singer Company (N.D. Cal. 1981) 538 F. Supp. 26.

The United States Court of Appeals for the Ninth Circuit affirmed. The Court of Appeals opinion treated the question of duty as solely a matter of State Law, even though Petitioners had argued that Congress in establishing the Job Corp program had intended for Job Corp contractors to exercise due care toward neighboring residents.

Petitioners respectfully disagrees. 29 U.S.C. §932 specifically provides that "within Job Corp Centers, standards of

conduct and deportment shall be provided and stringently enforced." These stringent standards of deportment benefit three categories of persons: (1) The Job Corp members themselves; (2) staff members, teachers and other personnel who work directly with Job Corp members; and (3) residents of Job Corp centers whose cooperation and support are essential to a successful Job Corp program.

The Job Corp enrollees who attacked Mrs. Vu had long histories of delinquency and law violations while enrolled in the Job Corp. Singer had actual knowledge that these individuals had been involved in drug offenses, thefts and assaults, while they were Job Corp members. Contrary to the express statutory directive, standards of conduct and deportment for these individuals seemed to be non-existent.

The District Court specifically found that it was not unforeseeable that these individuals would continue their

criminal behavior in a manner consistant with the attack on Mrs. Vu. The Court found, however, that it was not foreseeable that Dr. and Mrs. Vu would be the victims.

Naturally petitioners do not ask this court to determine a question of State Law. To the extent that the Court of Appeals relied upon decisions of the California courts in Thompson v. County of Alameda, 27 Cal.3d 741 (1980) and Beauchene v. Synanon Foundation, Inc., 88 Cal.App.3d 342 (1979) its holding is not at issue here.

What is material, however, is the determination by the Court of Appeals that Congress did not intend to protect neighborhood residents by prescribing stringent standards of conduct for Job Corp members.

REASONS FOR GRANTING THE WRIT

Petitioners respectfully submit that certiorari should be granted because this case raises an important question of

Federal Law which has not been, but should be, settled by this Court.

Petitioners are law-abiding citizens who have been gravely injured by a group of individuals whom the Federal Government was paying to educate, train and house. The Government contracted with Singer, a private company, to supervise these young people in accordance with the will of Congress.

Congress provided by statute that Job Corp members were to be carefully supervised and stringently disciplined. Singer was at best careless in this obligation, permitting a number of individuals to remain on the Government payroll while they used drugs, stole, and otherwise violated the law.

The reasoning of the District Court and the Court of Appeals is difficult to understand. They concede good community relations were an essential part of the statutory and administrative scheme

establishing the Job Corp, yet they conclude that these good community relations were intended to benefit only the Corp members and not other members of the community.

The conclusion should be carefully examined by this Court. Congress is a political institution. The Job Corp was created as part of the Economic Opportunity Act of 1964 (42 U.S.C. §2711 et. seq.--now 29 U.S.C. §911 et seq. (1976), a particularly far-reaching and controversial measure. The Job Corp was designed to serve troubled youngsters in a community environment.

Congress was keenly aware that misbehavior by Job Corp members would tend to undermine public confidence in the program, and limit the number of communities that would be willing to accept Job Corp centers. Accordingly, Congress included in the statute itself this previously-cited requirement relating to

deportment and discipline. They were intended to benefit both the Corp members themselves and residents of the communities in which they lived. There is no basis for suggesting that Congress favored one to the exclusion of the other.

This issue has not yet been decided by any Court of Appeal. In Gibson v. United States, 457 1391 (3d Cir. 1972) and Gibson v. United States 567 F2d 1237 (3d Cir. 1977) the Third Circuit examined the liability of contractors for behavior occurring on Job Corp property, but the Gibson cases are not especially helpful in the circumstances presented here.

CONCLUSION

For the reasons above stated Petitioners respectfully request that certiorari be granted.

Dated: September 8, 1983

Donald A. Tenenbaum

DONALD A. TENENBAUM

APPENDIX A

IN THE COURT OF APPEALS OF CALIFORNIA

No. 81-4632

Argued and Submitted: September 15, 1982

ANTHIA VU and HUNG T. VU

v.

THE SINGER COMPANY

Merrill
Poole
*Rothstein

Filed: May 26, 1983

*Honorable Barbara J. Rothstein, District Judge, United States District Court for the Western District of Washington, sitting by designation.

Appellants Anthia and Hung T. Vu have sued appellee The Singer Company for damages allegedly resulting from Singer's negligence. The action was removed from California state court on the ground of diversity of citizenship, and the question presented on appeal is whether, under California law, Singer, as the operator of a Job Corps Center, owed the Vus a duty of care in the supervising of Job Corps members. The District Court, construing state law as laid down in a series of court decisions, held that Singer owed no duty of care and granted summary judgment in favor of Singer. 538 F. Supp. 26 (N.D. Cal. 1981).

The Job Corps was created by the Economic Opportunity Act of 1964, 42 U.S.C. §2711 et. seq. (1970) (now 29 U.S.C. §911 et. seq. (1976)). Its purpose is to assist disadvantaged young people toward useful employment by providing vocational training, work experience and educational

programs. The Office of Economic Opportunity of the Department of Labor ("OEO") is authorized to enter into contracts with private contractors for the operation of Job Corps Centers where members are provided room and board and the local activities of the corps are carried out. Singer, under contract with OEO, operates the Job Corps Center at San Jose, California.

On December 17, 1978, six male and several female members of the San Jose Corps, after consuming alcohol in a public park near the center, entered the Vu home through an unlocked door. They stole some of the Vus' belongings and Mrs. Vu was raped. Some of the attackers, prior to this attack, had been known to drink to excess or use drugs and some had been involved in fights away from the center grounds; some had been convicted of theft. The record does not demonstrate, however, that any corps member, prior to this

incident, had ever harmed a neighborhood resident or broken into any neighborhood home.

The Vus contend that Singer owed a duty to the residents of the neighborhood to exercise reasonable care in supervising and controlling the corps members. They assert that the corps constitutes a group of high-risk youths with histories of instability, criminal activity and substance abuse, and contend that the neighborhood should have been warned of the presence of such a group.

Appellants contend that a duty of care was imposed on Singer by the statute creating the Job Corps and the administrative regulations implementing it. The District Court stated:

> Plaintiffs argue that the enabling legislation sets forth a standard of care to which Singer must adhere. 29

C.F.R. §97a.97(a) permits each center to adopt its own behavior code which must prohibit the possession of unauthorized goods, such as drugs, and assaultive behavior. Section 97a.97(b) lists various sanctions which may be taken against corpsmembers who violate the regulations, ranging from suspension of privileges and restriction to the center to discharge from the program. 29 U.S.C.A. §932(a) and (b) (Supp. 1981) require the centers to strictly enforce their behavior codes em-

> ploying disciplinary measures. Plaintiffs assert that Singer violated the statute and the regulations by failing previously to take disciplinary action against the corpsmembers who later attacked Mrs. Vu when they were found drunk or in a drugged state at the Center or when they exhibited violent tendencies.

538 F. Supp. at 32 (footnote omitted).

The District Court held that these provisions did not create a duty of care toward the Vus because they were not members of the class for whose protection the regulations were intended. It stated:

> A fair reading of the statute demonstrates

> that Congress intended primarily to protect the program and benefit the corpsmembers by maintaining good community relations. Community pressure to ban a Job Corps Center from the neighborhood due to corpsmember incidents would undermine the program. Although the surrounding community indirectly benefits from this Congressional objective, the statute and regulations do not create a standard of care owed to the community, the breach of which would result in Singer's liability.

538 F. Supp. at 33.

We agree with this construction and conclude that no duty of care in controlling or supervising the corps members is owed to the Vus or to the neighborhood by virtue of the relevant statute, regulations or behavior code adopted by Singer. Aside from statute, regulation or code, however, questions remain as to whether a duty of care is imposed upon Singer by California's common law of torts.

California recognizes that while "under the common law, as a general rule, one person owed no duty to control the conduct of another * * *, nor to warn those endanged by such conduct * * *, the courts have carved out an exception to this rule in cases in which the defendant stands in some special relationship to either the person whose conduct needs to be controlled or in a relationship to the foreseeable victim of the conduct * * *." Tarasoff v. Regents of the University of California, 17

Cal. 3d 425, 435, 131 Cal. Rptr. 14, 23, 551 P.2d 334, 343 (1976) (citations omitted). See Davidson v. City of Westminster, 32 Cal. 3d 197, 203, 185 Cal. Rptr. 252, 255, 649 P.2d 894, 897 (1982).

Here Singer, as operator of a Job Corps Center, does have a special relationship with its corps members. The District Court concluded, however, that California law has provided that this exception to the general rule does not apply under the circumstances of this case for two reasons.

First, the Court concluded that under Califonria law the victim must be foreseeable and specifically identifiable. 538 F. Supp. at 31. This clearly is the law of California with respect to any duty to warn. Thompson v. County of Alameda, 27 Cal. 3d 741, 167 Cal. Rptr. 70, 614 P.2d 728 (1980). In Thompson, the California Supreme Court held that "public entities and employees have no affirmative duty to

warn of the release of an inmate with a violent history who has made nonspecific threats of harm directed at nonspecific victims." 27 Cal. 3d at 754, 167 Cal. Rptr. at 77, 614 P.2d at 735 (emphasis in original).

California Courts of Appeal have extended this need for foreseeable identification of the victim to cases involving the duty to control as well as the duty to warn. In Hooks v. Southern California Permanente Medical Group, 107 Cal. App. 3d 435, 165 Cal. Rptr. 741 (1980), which concerned the duty of a hospital to warn of or to control the conduct of a disturbed employee, the court stated that for such a duty to exist, the defendant must be put "on notice that a specific, rather than a generalized, risk exists. Moreover, one must know that the target of the risk is an identifiable and foreseeable victim." 107 Cal. App. 3d at 444, 165 Cal. Rptr. at 746 (emphasis added)

(citations omitted). See also Doyle v. United States, 530 F. Supp. 1278, 1287-88 (C.D. Cal. 1982) (dicta); McDowell v. County of Alameda, 88 Cal. App. 3d 321, 325, 151 Cal. Rptr. 779, 781-782 (1979).

Further, the District Court concluded that California's public policy favoring efforts toward rehabilitation of convicts would extend to Job Corps efforts to rehabilitate disadvantaged youths. 538 F. Supp. at 31-32.

California public policy favors efforts toward rehabilitation of prisoners through release on parole programs. California Government Code §845.8 (West 1980) grants absolute immunity to public entities and employees from liability for any injury resulting from the grant of parole or from the conditions fixed in the grant. California courts have recognized that this section provides an exception to the rule that special relationships can result in creation of duty. E.g.,

Whitcombe v. County of Yolo, 73 Cal. App. 3d 698, 710-13, 141 Cal. Rptr. 189, 195-98 (1977).

In cases involving injuries caused by persons released from confinement to take part in rehabilitation programs, California courts have not only recognized that the act of release itself is immunized, but have refused to find a duty to exercise tighter control over the person released where such would serve to jeopardize the rehabilitation program. In Beauchene v. Synanon Foundation, Inc., 88 Ca. App. 3d 342, 348, 151 Cal. Rptr. 796, 799 (1979), the court quoted Whitcombe v. County of Yolo, 73 Cal. App. 3d at 716, 141 Cal. Rptr. at 199, to the following effect:

> Although appellant's injuries may be grievous, "[o]f paramount concern is the detrimental effect a finding of liability

> would have on prisoner release and rehabilitation programs. Were we to find a cause of action stated we would in effect be encouraging the detention of prisoners in disregard of their rights and society's needs."

Further, the Beauchene court held:

> To hold respondent civilly liable would deter the development of innovative criminal offender release and rehabilitation programs, in contravention of public policy.

88 Cal. App. 3d at 348, 151 Cal. Rptr. at 799.

Beauchene involved a private rather than a public agency. The Synanon

Foundation is a voluntary private rehabilitation institution that provides a structured or controlled environment for its residents. A prisoner was admitted to probation on condition that he enter the "Synanon program." He "escaped" from the program and went on a "crime spree" in the course of which he shot appellant in the arm. Appellant brought suit charging the Synanon Foundation with negligence in allowing the prisoner to escape. California Government Code §845.8 (West 1980) grants immunity to any public entity or employee from liability for injury caused by "an escaping or escaped prisoner." The court stated:

> Respondent concededly is not a "public entity or public employee" within the meaning of section 845.8. But the same public policy that moved the Legislature

> to immunize public release and rehabilitation programs from liability -- to encourage such innovations in the interests of criminal justice -- compels the conclusion that respondent's private release and rehabilitation program owed no legal duty to this appellant.

88 Cal. App. 3d at 348, 151 Cal. Rptr. at 799 (emphasis in original).

With reference to this public policy the District Court stated:

> Beauchene is applicable to the facts of this case. Although corpsmembers are not necessarily in prisoner release programs, Job Corps is designed to

> rehabilitate former criminal offenders, drug users and ghetto youths. See Gibson v. United States, 567 F.2d 1237, 1245 N.13 (3d Cir. 1977), cert. denied, 436 U.S. 925, 98 S.Ct. 2819, 56 L. Ed.2d 768 (1978).[1] A finding of liability on the part of Singer to victims of corpsmembers' crimes would jeopardize the program.

538 F. Supp. at 32.

In our view, this is a reasonable construction of California law.[2] To impose on the operator of a center a duty to prevent the tortious acts of corps members and to impose liability to the victims of such acts for having failed to do so would place in some degree of jeopardy the Job

Corps program and its efforts towards the rehabilitation of disadvantaged young people. Faced with such potential liability an operator with any concern for its economic survival could be expected to terminate from the corps any person whose conduct suggests that he might pose a risk, whether it otherwise justifies termination or not. This would deprive of the program's benefits those most in need of rehabilitation.

Furthermore, placing in the hands of a jury the cost of a failure on the part of an operator to perform its duties successfully (and the standards for successful performance) could well discourage as too risky the effort to perform at all.

We conclude that the District Court correctly read California law as eliminating any duty on the part of Singer to warn the Vus with respect to possible injury by corps members. Further, in our

judgment the Court has reasonably predicted that, in the light of California's policy of providing support to rehabilitative programs, California courts would hold that Beauchene should be construed to cover such a program as that of the Job Corps. And we agress with the District Court that no duty was created by the statute and regulations creating and implementing the Job Corps. Accordingly, Singer owed no duty to the Vus to warn of or to control the conduct of corps members.

FOOTNOTES

1/ The footnote in Gibson, 567 F.2d at 1245 n.13, to which the District Court referred reads as follows (emphasis in original): "Certainly OEO cannot be held to have been negligent for selecting and enrolling drug users, former criminal offenders, and ghetto youths, since those are precisely the people the program was designed to help. See 42 U.S.C. §2715."

2/ In a diversity case, the interpretation of state law by a District Judge in the state where he sits is entitled to deference. See H.R.H. Co. v. American Mortg. Ins. Co., 685 F. 2d 315, 317 (9th Cir. 1982); Young v. Reynolds Metals Co., 685 F2d 1091, 1092 (9th Cir. 1982).

ROTHSTEIN, District Judge, concurring.

I join the majority because I believe the result is required by the holding of the California Supreme Court in Thompson v. County of Alameda, 27 Cal. 3d 741, 614 P.2d 728, 167 Cal. Rptr. 70 (1980). Because I recognize that we must follow Thompson in this diversity action, I take issue not with the majority opinion but with Thompson, which enunciates a myopic view of foreseeability in the context of the duty to warn and to supervise.

In Thompson, the California court distinguished Johnson v. State, 69 Cal. 2d 782, 447 P.2d 352, 73 Cal. Rptr. 240 (1968) and Tarasoff v. Regents of the Univ. of California, 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (1976), the two leading cases in which an affirmative duty to protect a third party from another was found. In Johnson, 69 Cal. 2d at 784-85, 447 P.2d at 354, 73 Cal. Rptr. at 242, the state placed a minor with "homicidal

tendencies and a background of violence and cruelty" in a foster home without warning the foster parent. The minor attacked the foster parent and she sued the state. Id. The court held, "As the party placing the youth with Mrs. Johnson, the state's relationship to plaintiff was such that its duty extended to warning of latent, dangerous qualities suggested by the parollee's history or character." Id. at 785, 447 P.2d at 355, 73 Cal. Rptr. at 243.

In Tarasoff, 17 Cal. 3d at 430, 551 P.2d at 339-40, 131 Cal. Rptr. at 19-20, the Tarasoffs alleged that the killer of their daughter had confided to his therapist his specific intention to kill her. There, the court relied not only on the unique fact of a named victim to find a duty, but also on the plaintiff's showing of a special relationship between the killer and the therapist. Id. at 436, 551 P.2d at 343, 131 Cal. Rptr. at 23.

In Thompson, 27 Cal. 3d at 746, 614

P.2d at 730, 167 Cal. Rptr. at 72, a juvenile offender, released temporarily from a county institution to his mother, murdered a neighbor's child within 24 hours of his release. The Thompsons alleged that the county know of the juvenile's violent and dangerous impulses towards children and that the juvenile had "indicated that he would, if released, take the life of a young child in the neighborhood." Id. However, under these facts, the court held that no duty to warn existed because the plaintiffs had alleged neither the "direct or continuing relationship" between them and the county which existed in Johnson, nor that their decedent was a "foreseeable or readily identifiable target" of the offender's threats as in Tarasoff. Thompson, 27 Cal. 3d at 753, 614 P. 2d at 734, 167 Cal. Rptr. at 76.

As recognized by Justice Tobriner, the author of both the Johnson and Tarasoff opinions, the Thompson majority misread the

controlling precedent to fashion an overly restrictive concept of foreseeability:

> The principles underlying the Tarasoff decision indicate that even the existence of an identifiable victim is not essential to the cause of action. Our decision rested on the basic tenet of tort law that a "'defendant owes a duty of care to all persons who are foreseeably endangered by his conduct.'" The "avoidance of foreseeable harm," we explained, "requires a defendant to control the conduct of another person, or to warn of such conduct . . . if the defendant bears some special relationship to the dangerous person or to the potential victim." The relationship between the therapist and patient fulfilled this requirement in Tarasoff; the relationship between the county and a juvenile under its custody suffices in the present case.
>
> At no point did we hold that such duty of care runs only to identifiable victims. We cited

> numerous examples to the contrary. One example makes the point particularly clear: "[a] doctor must . . . warn a patient if the patient's condition or medication renders certain conduct, such as driving a car, dangerous to others." It would be absurd to confine that duty to motorists or pedestrians whom the doctor could identify in advance.

Id. at 760-61, 614 P. 2d at 739-40, 167 Cal. Rptr. at 81-82 (Tobriner, J., dissenting) (citations and footnote omitted; emphasis in the original).

Applying the Tarasoff principles to the facts here, it is obvious that a special relationship exists between Singer and the corps members who victimized the Vus.[1] Thus, the inquiry is whether the Vus

[1] Such a relationship arguably exists even between Singer and the Vus by virtue of the continuous and close proximity of the Job Corps Center to the Vu home. The Thompson court's characterization of that relationship, however, effectively limits this relationship to the facts of Johnson. See Thompson, 27 Cal. 3d at 751, 614 P.2d at 733, 167 Cal. Rptr. at 75 (relationship with specific victim).

were foreseeable victims. The evidence shows: (1) that the Vus lived between the Job Corps Center and a nearby park, a Job Corps "hang out" that the Center placed off-limits because of the drinking and fighting that occurred there, see Vu v. Singer, 538 F. Supp. 26, 28 (N.D. Cal. 1981); (2) after the park was placed off limits it was patrolled by Job Corps security, id.; (3) the corps members who attacked and robbed Mrs. Vu had been involved repeatedly in alcohol and drug abuse, assaults and thefts while at the Center, id. at 30 & nn. 3-5; and (4) the attack occurred while the corps members were en route from the park to the Center. Id. at 28. Clearly, under Tarasoff, the question whether the Vus, as residents of the area between the Job Corps Center and the park, were foreseeable victims presents at least a triable issue of fact. See Thompson, 27 Cal. 3d at 761, 614 P.2d at 740, 167 Cal. Rptr. at 82 (Tobriner, J.,

dissenting); Buford v. State, 104 Cal. App. 3d 811, 824, 164 Cal. Rptr. 264, 272 (1980).

The district court, however, was forced to conclude here that, under Thompson, the Vus were not foreseeable victims as a matter of law. Vu, 538 F. Supp. at 31. The court reasoned that Thompson requires a specifically identifiable victim -- more specific than the class of neighborhood children threatened in Thompson -- before a duty to warn may now arise in California. The court applied this reasoning to the "duty to control" alleged by the Vus, concluding "that no duty arises to protect unforeseeable victims from third persons, by warning or supervision, because the burden of imposing liability upon a defendant for a third person's actions is too onerous without the foreseeability limitation." Id. at n.7.

As recognized by Justice Tobriner in

Thompson, the consideration of whether the Vus are "identifiable victims" is relevant not to the existence of a duty of care, but only to the question whether a warning to the Vus might have been a reasonable means to discharge that duty. Thompson, 27 Cal. 3d at 761, 614 P.2d at 740, 167 Cal. Rptr. at 82 (Tobriner, J., dissenting). The application of such a requirement here to a duty to control follows logically from Thompson, but nonetheless compounds the Thompson court's error in reasoning because it permits a "means" consideration to dictate the existence of a duty to care. The district court's implicit recognition that increased supervision of the corps members might well have been more effective here than warning the neighborhood underscores this error. See Vu, 538 F. Supp. at 31 n.7.

Justice Tobriner also provides sound criticism applicable to the reliance, by both the district court and the majority,

on Beauchene v. Synanon Foundation, Inc., 88 Cal. App. 3d 342, 347-48, 151 Cal. Rptr. 796, 798-99 (1979). Beauchene is cited to show that public policy considerations also defeat the finding of a duty of care in this case. As Justice Tobriner noted in Thompson, in which Beauchene was also cited, the policy underlying the plaintiff's cause of action was ignored by the majority. Thompson, 27 Cal. 3d at 763, 614 P.2d at 741, 167 Cal. Rptr. at 83 (Tobriner, J., dissenting).

That policy includes the principle, embodied in California statute, of compensating victims of negligence in order to recompense their injury and to deter future negligence. Id. (citations omitted). "Consequently," as Justice Tobriner stated, "'[u]nless the Legislature has clearly provided for immunity, the important societal goal of compensating injured parties for damages caused by willful or negligent acts must prevail.'"

Id. (citations omitted). These precepts should outweigh any anxiety that the California legislature erred in not immunizing privately operated rehabilitation programs.

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA)

I, THERESE MCLEOD, declare and say:

I am employed in the County of Santa Clara, California. I am over the age of eighteen years and not a party to the within cause; my business address is 100 Park Center Plaza, Suite 550, San Jose, California. I served the within Petition for Writ of Certiorari on the parties in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at San Jose, California, addressed as follows:

Edwin A. Heafey, Jr.
CROSBY, HEAFEY, ROACH & MAY
1939 Harrison Street
Oakland, California 94612

Executed this 9th day of August, 1983, at San Jose, California.

Therese McLeod

THERESE MCLEOD

Subscribed and sworn to before me this 9th day of August, 1983, at San Jose, California.

OFFICIAL SEAL
MARILYN A. GARIBALDI
NOTARY PUBLIC — CALIFORNIA
COUNTY OF SANTA CLARA
Comm. Exp. March 29, 1985

Marilyn A. Garibaldi

Notary Public

No. 83-417

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1983

HUNG T. VU & ANTHIA VU,
Petitioners,

VS.

THE SINGER COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Did the United States District Court for the Northern District of California and the United States Court of Appeals for the Ninth Circuit correctly conclude that Respondent The Singer Company owed Petitioners no duty of care under controlling California law?

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BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit and the order of the United States District Court for the Northern District of California are identified in the Petition.

JURISDICTION

Respondent The Singer Company (Respondent) objects to Petitioners' jurisdictional statement. Review on certiorari under Rule 17 of this Court requires that an "important question of federal law" be presented. In the litigation

below, Petitioners asserted that the Job Corps' enabling statutes and regulations compelled Respondent to either keep corpsmembers locked up like caged animals, or dismiss them from the program when they did anything wrong. According to Petitioners, failure to do so resulted in civil tort liability for any off-center criminal activity of these under-privileged youths.*

It is, of course, a difficult and sensitive problem to balance the rights of individuals in rehabilitation programs and the goal of making those individuals into productive members of society, against the need of the public to be protected from crime.

There are two levels to that problem: first, what degree of discipline should be exercised by those responsible for such programs; and second, whether individuals injured by participants in rehabilitation programs should have a tort law remedy against the program operator, as well as the individual causing the injury. With respect to Job Corps, the first question is one of federal law. The degree of discipline for corpsmembers is defined in the applicable federal statutes and regulations. The second, however, is a question of state law. There is no express or implied private federal right of action attached to the Job Corps legislation, and Petitioners do not assert otherwise. Thus, even if Petitioners were correct that under federal statutes Respondent should have caged or dismissed the corpsmembers who injured them, that does not present an

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*Although petitioners have identified the allegedly relevant code section as 29 U.S.C. § 932, that section has been repealed and is recodified in 29 U.S.C. § 1700.

important question of federal law as required by Rule 17. As both lower courts concluded, Petitioners must turn to state substantive law to determine if Respondent owed *them* a duty of care, redressable in tort litigation.

State law governs substantive issues in a diversity suit, and the federal court is bound by that law as declared by the highest state court. *Olsen-Frankman Livestock, Etc. v. Citizens Nat.*, 605 F.2d 1082, 1083 n.1 (8th Cir. 1979); *Reid v. Volkswagen Of America, Inc.*, 575 F.2d 1175, 1176 (6th Cir. 1978); *Knapp v. North American Rockwell Corp.*, 506 F.2d 361, 364 (3d Cir. 1974), *cert. denied*, 421 U.S. 965 (1975); *Wirth v. Clark Equipment Company*, 457 F.2d 1262, 1264 (9th Cir.), *cert. denied*, 409 U.S. 876 (1972); *Aerosonic Corporation v. Trodyne Corporation*, 402 F.2d 223, 229 (5th Cir. 1968).

Thus, both the district court and the Court of Appeals were bound to follow the controlling state negligence law here, and that result does not change simply because a federal statute might be involved. *E.g., Brandes v. Burbank*, 613 F.2d 658, 661-667 (7th Cir. 1980); *Frank's Plastering Company v. Koenig*, 341 F.2d 257, 264 (8th Cir. 1965); *Karle v. National Fuel Gas Distribution Corp.*, 448 F.Supp. 753, 767 (W.D. Pa. 1978). Since only a question of state law has been presented, the Petition should be denied on jurisdictional grounds. *Henry v. Mississippi*, 379 U.S. 443, 446-447, 13 L.Ed.2d 408 (1965); *Herb v. Pitcairn*, 324 U.S. 117, 126, 89 L.Ed. 789 (1945).

Even if this Court were to conclude that a "federal issue" is presented in the Petition, that issue does not rise to the level of importance necessary to confer jurisdiction

here. The jurisdiction of this Court is confined to federal questions that reach beyond "the academic or the episodic," and the Court does not sit simply to resolve disputes between the litigants before it. *Rice v. Sioux City Cemetery*, 349 U.S. 70, 74, 99 L.Ed. 897 (1955).

Petitioners present no compelling reason for the immediate interpretation of the federal statutes and regulations that govern the Job Corps. As Petitioners' brief points out, the Job Corps was conceived in 1964 and in the intervening 20 years no federal case has had occasion to construe its enabling statutes and regulations in the context of tort litigation involving people living in the vicinity of Job Corps centers who are injured by criminal acts of off-duty corpsmembers. It is apparent therefore that there is no federal statute here in need of construction on an issue important to many litigants. To the contrary, it is only this unique case that would be impacted by a decision on the issue posed here, and the Petition should be denied on this basis as well.

Finally, the "federal issue" Petitioners present was framed for the first time (if at all) in their Petition. This case was removed to the federal district court, and as Petitioners admitted in their brief before the Ninth Circuit Court of Appeals, the basis of jurisdiction was diversity (28 U.S.C. § 1332). While the Job Corps' enabling statutes and regulations were raised in the courts below, Petitioners never argued that the statutes they cite created an implied federal right of action. Rather, Petitioners asserted that the statutes created a standard of conduct which gave rise to a duty of care under state law. Since the federal issue has been raised (if at all) for the first time in this Petition,

it should not be considered. *Tacon v. Arizona,* 410 U.S. 351, 352, 35 L.Ed.2d 346 (1973); *Lawn v. United States,* 355 U.S. 339, 362, n.16, 2 L.Ed.2d 321 (1958).

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